SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 20069

WILLIAM O'BRIEN
PLAINTIFF-APPELLEE

v.

CITY OF NEW HAVEN
DEFENDANT-APPELLANT

BRIEF OF THE DEFENDANT-APPELLANT CITY OF NEW HAVEN WITH SEPARATELY BOUND APPENDICES PART ONE AND PART TWO

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TABLE OF CONTENTS

Page

STATEMENT OF THE ISSUE

I. DID THE APPELLATE COURT PROPERLY AFFIRM THE JUDGMENT OF THE TRIAL COURT CONCLUDING THAT THE PLAINTIFF'S LAWSUIT COMPLIED WITH THE NOTICE REQUIREMENT AND THE TIME LIMITATIONS SET FORTH IN GENERAL STATUTES § 7-101a(d)?

TABLE OF AUTHORITIES

Page

Cases

Statutes

Federal Statutes

NATURE OF THE PROCEEDINGS AND STATEMENT OF FACTS

This case is about when and how a municipal employee must inform his municipal employer that he has been sued for a tort that he is alleged to have committed while in the discharge of his municipal duties in order to receive the benefit of General Statutes § 7-101a. Specifically, this appeal asks this Court to decide when the time limitations period and notice requirement set forth in General Statutes § 7-101a begin to run. General Statutes § 7-101a requires municipalities to "protect and save harmless" municipal officers and employees who are sued by third-parties as a result of their municipal positions, but *only if* they comply with the statute's time limitations period and notice provision. General Statues § 7-101a(d) provides:

> No action shall be maintained under [§ 7-101a] against such municipality or employee unless such action is **commenced within two years after the cause of action therefor arose** nor unless written notice of the intention to commence such action and of the time when and the place where the damages were incurred or sustained has been filed with the clerk of such municipality **within six months after such cause of action has accrued**.

(Emphasis added.)

In June 2015, the plaintiff, William O'Brien, filed this lawsuit against the defendant, the City of New Haven, seeking to recover attorneys' fees that were incurred in defending a lawsuit that was filed against him in 2010. A1. O'Brien had been employed by the City as its Assessor from 2009 to 2011. T.1/28/16 at 7. In November 2010, a third-party, Tax Data Solutions LLC (TDS), sued O'Brien in a lawsuit that sounded in several intentional torts. Def. Ex. R (Complaint dated 11/22/10) ("2010 TDS lawsuit").[1] On January 15, 2015, a "judgment by stipulation before trial" was entered in the 2010 TDS lawsuit. A57. In April 2015, O'Brien filed

[1] The 2010 TDS lawsuit alleged six counts: (1) tortious interference with contracts; (2) tortious interference with business expectancy; (3) CUTPA; (4) slander per se; (5) libel per se; and (6) civil theft.

notice with the City's clerk of his intention to commence this lawsuit against the City. A12. The lawsuit was commenced with service on the Clerk on May 26, 2015.[2] Dkt. Entry No. 100.3.

The City moved to dismiss the lawsuit for noncompliance with General Statutes § 7-101a(d)'s time limitations period and notice provision. The trial court (*Fischer, J.*) denied the motion, holding that the six-month notice requirement did not start to run until January 2015, when a stipulated judgment was entered in the 2010 TDS lawsuit. Mem.Dec. (11/15/15). Subsequently, after a trial to the court (*Frechette, J.*), that decision was reaffirmed. Mem.Dec. (3/29/16). The City filed an appeal which was docketed as A.C. 39107.[3] The appeal was heard by a panel of the Appellate Court on September 14, 2017. In a decision dated December 5, 2017, the Appellate Court affirmed the trial court's decision. See O'Brien v. New Haven, 178 Conn. App. 469 (2017).

Both the City and the plaintiff filed petitions for certification to appeal from the Appellate Court's decision. On February 7, 2018, this Court granted the City's petition, after which the

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[2] The complaint is dated May 21, 2015 and was filed with the Superior Court on June 1, 2015. However, it is the date that the complaint was served on the defendant that is the operative date for commencement of the action. See Davis v. Family Dollar Store, 78 Conn. App. 235, 240-241 (2003).

[3] The plaintiff brought three separate lawsuits under § 7-101a against the City: one in 2013, one in 2014, and this one in 2015. The City's appeal (A.C. 39107) was from the trial court's decision in the 2015 lawsuit, O'Brien v. City of New Haven, CV-15-6054959-S, from which the plaintiff also appealed (A.C. 39102). The 2015 lawsuit was consolidated at trial with the 2013 lawsuit, O'Brien v. City of New Haven, CV-13-6039643-S, which also was the subject of an appeal by the plaintiff (A.C. 39103). A joint motion to consolidate the appeals was granted. See A.C. Order (12/12/16). During briefing, the plaintiff withdrew his appeal in A.C. 39103. The appeals proceeded on the City's appeal in A.C. 39107 and the plaintiff's appeal in A.C. 39102. The Appellate Court's decision erroneously refers to the City as the appellee in A.C. 39107 and the appellant in A.C. 39102. O'Brien, 178 Conn. App. at 471.

City moved for reconsideration of the certified question.[4] On April 4, 2018, this Court granted the City's motion and re-stated the certified question presented in this appeal as follows:

> "Did the Appellate Court properly affirm the judgment of the trial court concluding that the plaintiff's lawsuit complied with the notice requirement and the time limitations set forth in General Statutes § 7-101a(d)?"

S.C. Order (4/4/18). This Court's answer to the certified question will inform all municipal employees when and how they must inform their municipal employer of any claim, demand, or suit initiated against them in order to be afforded the benefits of General Statutes § 7-101a.

I. THE APPELLATE COURT ERRED IN ITS CONCLUSION THAT THE PLAINTIFF'S LAWSUIT COMPLIED WITH GENERAL STATUTES § 7-101a(d)

The issue in this appeal is whether the plaintiff's lawsuit complied with General Statutes § 7-101a(d)'s time limitations period ("two years after the cause of action therefor arose") and notice provision ("six months after such cause of action has accrued"). There are four possible trigger points that would start the clock for General Statutes § 7-101a(d)'s two year time limitations period and two possible trigger points for the statute's six month notice requirement. The two year limitations period could begin at one of the following points: (1) when the underlying tort cause of action against the municipal employee arose ("Interpretation One");[5] (2) if "cause of action" refers to a cause of action under General Statutes § 7-101a, and not

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[4] The original certified question asked, "Did the Appellate Court properly affirm the judgment of the trial court interpreting when the plaintiff's cause of action for indemnification accrued for the purposes of the notice requirement and time limitations set forth in General Statutes § 7-101a(d)?" The City sought reconsideration because of its concern, *inter alia*, that the original certified question's use of the word "accrued" overly emphasized the clause of the statute related to the filing of notice (accrual), and did not acknowledge the time limitations period set forth by the statute ("cause of action therefor arose"). A.195.

[5] The last tortious acts alleged to have been committed by O'Brien in the 2010 TDS lawsuit were in "spring 2010." Under Interpretation One, the latest that the lawsuit should have been commenced was in spring 2012.

the underlying tort cause of action against the municipal employee, then the date when "any claim, demand or suit" was initiated against the employee ("Interpretation Two");[6] (3) the date when the employee receives a favorable disposition in the underlying lawsuit ("Interpretation Three");[7] or (4) the date when the "stipulated judgment" was entered in the 2010 lawsuit ("Interpretation Four").[8] With respect to the six month notice requirement, the possible "accrual" trigger points are: (1) when the municipal employee first learned that a lawsuit was filed against him (consistent with the trigger for "Interpretation Two"); or (2) the date of the judgment in the underlying lawsuit (consistent with the trigger for "Interpretation Four").

If any of the first three interpretations are the correct reading of the statute's time provisions for either or both "arose" and "accrued," then the City's appeal would need to be sustained. Only if both the "arose" and "accrued" clauses of the statute are governed by Interpretation Four would the plaintiff's lawsuit be compliant.

The Appellate Court's analysis focused only on the six month notice provision and, specifically, the "accrued" date of O'Brien's claim under General Statutes § 7-101a. The Appellate Court adopted the last trigger point (Interpretation Four), concluding that the six month notice period did not begin to run until the underlying tort lawsuit against the municipal employee had been resolved. 178 Conn. App. at 487-88. The Appellate Court rejected

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[6] The return of service on O'Brien of the 2010 TDS lawsuit was filed on December 2, 2010. Under Interpretation Two, the lawsuit should have been commenced by December 2012.

[7] The plaintiff's 2013 and 2014 lawsuits alleged that there was a favorable disposition in the 2010 TDS lawsuit in February 2013. Thus, under Interpretation Three, this lawsuit should have been commenced by February 2015. This appears to have been the interpretation taken by the plaintiff in his 2013 and 2014 lawsuits. See 2013 Complaint (Def. Ex. M), para. 11; O'Brien's 2014 Complaint (Def. Ex. N), para. 11.

[8] The stipulated judgment in the 2010 TDS lawsuit was entered on January 15, 2015. Under Interpretation Four, O'Brien's claim accrued (and arose) on that date.

Interpretation One and failed to consider Interpretation Two. Nor did the Appellate Court consider that, even if Interpretation Four did apply to the six month notice requirement, Interpretations One or Two would still govern the two year limitations period. The City posits that Interpretation One or, alternatively, Interpretation Two is the proper trigger for the two year limitations period and that Interpretation Two triggers the six month notice period. As a result, this lawsuit is time-barred as a matter of law.

A. Standard of Review and Relevant Legal Principles

The question of whether the plaintiff complied with General Statutes § 7-101a's time limitations period and notice provision is a question of law because it requires this Court to construe § 7-101a as it applies to a particular factual scenario. See Colangelo v. Heckelman, 279 Conn. 177, 182 (2006). This Court's review is, therefore, plenary. Marchesi v. Board of Selectmen of the Town of Lyme, 309 Conn. 608, 620 (2013).

The time limitations set forth in General Statutes § 7-101a(d) are jurisdictional. As this Court has explained:

> Where ... a specific time limitation is contained within a statute that creates a right of action that did not exist at common law, then the remedy exists only during the prescribed period and not thereafter.... In such cases, the time limitation is not to be treated as an ordinary statute of limitation, but rather is a limitation on the liability itself, and not of the remedy alone.... [U]nder such circumstances, the time limitation is a substantive and jurisdictional prerequisite, which may be raised [by the court] at any time, even by the court sua sponte, and may not be waived." (Citations omitted.) Ecker v. West Hartford, 205 Conn. 219, 232, 530 A.2d 1056 (1987) (wrongful death action); Vecchio v. Sewer Authority, 176 Conn. 497, 504–505, 408 A.2d 254 (1979) (appeal from sewer assessment); Hillier v. East Hartford, 167 Conn. 100, 104–105, 355 A.2d 1 (1974) (tort action against municipalities pursuant to General Statutes § 13a-149); Diamond National Corporation v. Dwelle, 164 Conn. 540, 546–47, 325 A.2d 259 (1973) (enforcement of mechanic's lien).

Ambroise v. William Raveis Real Estate, Inc., 226 Conn. 757, 766–67 (1993). The failure to comply with a statutory notice requirement against a municipality deprives the trial court of

jurisdiction over the claim. See Cuozzo v. Town of Orange, 147 Conn. App. 148, 156-57 (2013), aff'd, 315 Conn. 606 (2015) (statutory notice requirement in suit against municipality is jurisdictional); Bagg v. Thompson, 114 Conn. App. 30, 41 (2009) (court lacks subject matter jurisdiction if plaintiff fails to provide municipality with notice of intent to sue within time set by statute). Thus, absent compliance with the two year limitations and the six month notice provisions in General Statutes § 7-101a(d), the court must dismiss the action.

Application of these limitations periods must be strictly construed. Under the common law, municipalities are immune from liability. See Elliott v. City of Waterbury, 245 Conn. 385, 411 (1998). "[W]hen a statute is in derogation of common law or creates a liability where formerly none existed, it should receive a strict construction and is not to be extended, modified, repealed or enlarged in its scope by the mechanics of construction." Edmundson v. Rivera, 169 Conn. 630, 633 (1975). "[T]he operation of a statute in derogation of the common law is to be limited to matters clearly brought within its scope." Willoughby v. City of New Haven, 123 Conn. 446, 454 (1937). General Statutes § 7-101a *creates* liability for municipalities and, therefore, must be strictly construed. The strict construction principle of limiting the reach of municipal liability statutes applies with special force to statutes creating indemnification rights. See Ahern v. City of New Haven, 190 Conn. 77, 82 (1983). Statutes creating government liability to government officials must be construed strictly to limit the scope of its waiver of immunity. See Martinez v. Department of Public Safety, 263 Conn. 74, 83 (2003). This is because, as a matter of policy, such statutes require a municipality to use public funds and impose a burden upon its taxpayers for the benefit of *one* person, requiring that the special authorization to do so must be clearly established by statute. See Lambert v. New Haven, 129 Conn. 647, 649 (1943).

B. The Appellate Court's Decision Conflicts With Rules For Statutory Construction

The Appellate Court acknowledged that there was a split in the superior courts between Interpretations One and Four:

> We now turn to the question of when the time limitations and notice requirement set forth in § 7–101a(d) begin to run for purposes of a § 7–101a indemnification action, an issue on which the decisions of our Superior Courts are divided.... Several trial court decisions have held that the notice requirement and time limitations in § 7–101a(d) begin to run when the prior action is resolved.... Other trial court decisions have held that the notice requirement and time limitations in § 7–101a (d) begin to run when the third party tortious cause of action against the employee arises.

O'Brien, 178 Conn. App. at 480–81.[9] The Appellate Court analyzed this divide and rejected Interpretation One by applying it to a hypothetical situation and opining that it was irrational:

> To hold that the term "cause of action" as used in § 7–101a(d) refers to the alleged tortious conduct underlying the prior action would create an irrational result. For example, the six month time limitation to file notice of an intention to sue required by § 7–101a(d) could expire before the officer or employee has been sued for the allegedly tortious conduct. In such circumstances, the employee or officer would lose the protections of § 7–101a due to the inability to

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[9] The decisions with the most substantive analysis of this issue adopting Interpretation One are Deleon v. Winiarski, 2001 WL 291034 (Mar. 8, 2001) (*Rittenband, J.*) and Cooney v. Montes, 6 Conn. L. Rptr. 442 (May 18, 1992) (*O'Neill, J.*). A number of other superior courts have applied Interpretation One and treated the statute's time limitations as running from the underlying tort cause of action without directly analyzing the issue. See Doe v. Fields, 41 Conn. L. Rptr. 799 (Aug. 10, 2006) (*Lewis, J.*); Sammartino v. Turn, 26 Conn. L. Rptr. 238 (Jan. 19, 2000) (*Sullivan, J.*); Kivlen v. Town of New Fairfield, 1992 WL 43597 (Mar. 2, 1992) (*Fuller, J.*); McKnerney v. Ransone, 14 Conn. L. Rptr. 279 (May 19, 1995) (*Sheldon, J.*); City of New London v. General Star Indem. Co., 1995 WL 684792 (Nov. 13, 1995) (*Hurley, J.*); Boulanger v. Town of Old Lyme, 51 Conn. Supp. 636, 648 (Jan. 7, 2010) (*Cosgrove, J.*), aff'd, 127 Conn. App. 572 (2011); Dellaquila v. Chiara, 3 Conn. L. Rptr. 266 (Feb. 4, 1991) (*Allen, J.*); Borchetta v. Brown, 41 Conn. Supp. 420 (June 18, 1990) (*Lewis, J.*).

The three superior court decisions that provide the most substantive analysis in support of Interpretation Four were cited in the trial court's decision in this case: Spatola v. New Milford, 44 Conn. L. Rptr. 242 (Sept. 26, 2007) (*Pickard, J.*); Cannada v. Grady, 30 Conn. L. Rptr. 404 (Sept. 7, 2001) (*Berger, J.*); Knapp v. Derby, 21 Conn. L. Rptr. 149 (Jan. 15, 1998) (*Thompson, J.*).

> give timely notice to the municipality. The legislature could not have intended such a bizarre result.

Id. at 481–82. In support of this approach to statutory construction, the Appellate Court cited a 1984 case for the proposition that "[w]hen two constructions are possible, courts will adopt the one which makes the [statute] effective and workable, and not one which leads to difficult and possibly bizarre results." Id. at 481 (quoting Maciejewski v. West Hartford, 194 Conn. 139, 151-52 (1984)).[10] It then decided that Interpretation Four was the preferred choice. This was an erroneous analysis.

Since 2003, statutory construction has been governed by General Statutes § 1-2z:

> The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

Under § 1-2z, the court must first determine whether the text is "plain and unambiguous." To make this determination, it must consider: (1) the text of the statute itself and (2) its relationship to other statutes. Only *after* making these preliminary determinations does the court move to the *second* part of the test and consider whether the "plain and unambiguous" meaning would lead to an absurd or unworkable result. See Desrosiers v. Diageo North America, Inc., 314 Conn. 773, 784-85 (2014).

Instead of performing a § 1-2z analysis, the Appellate Court looked at two interpretations (Interpretations One and Four) and adopted the one which, in its view, was preferable. It rejected Interpretation One, failed to consider Interpretation Two, and chose Interpretation Four. However, Interpretation Four is not attainable through a § 1-2z analysis.

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[10] The quoted language was last relied upon in a decision by this Court in 2001, prior to the passage of General Statutes § 1-2z in 2003. See Connelly v. Commissioner of Correction, 258 Conn. 394, 407 (2001).

1. The text of the statute itself

a. plain meaning of "action" and "cause of action"

The first clause of the General Statutes § 7-101a(d) sets forth the time limitation to commence an action under General Statutes § 7-101a ("7-101a action"): "No *action* shall be maintained under this section against such municipality or employee unless such *action* is commenced within two years after the **cause** of *action* **therefor arose**..." (emphasis added). This first clause describes the time to commence the lawsuit as within two years after the cause therefor arose. Neither "cause" nor "cause of action" is defined by the statute and, thus, it is appropriate to consult dictionaries to afford them their ordinary meanings. See In re Elianah T.-T., 326 Conn. 614, 622 (2017); General Statutes § 1-1(a).

"Cause" is defined as "something that produces an effect, result or consequence." American Heritage Dictionary (2d Ed. 1982); Black's Law Dictionary (9th ed). It is also defined as "the person, event, or condition responsible for an action or result." American Heritage Dictionary (2d Ed. 1982). Thus, the plain meaning of this clause is that an "action" under General Statutes § 7-101a(d) needs to be started within two years of the thing that produced or resulted in the lawsuit or the "event... responsible for" the municipal employee being sued. That incident or event would be the underlying tort (Interpretation One). Alternatively, the plain meaning could refer to the condition or consequence that implicates the need for protection. In that case, the two year limitations period would begin to run on the date on which the municipal employee was served with the lawsuit (Interpretation Two).

"Cause of action" is also a legal term of art. Black's Law Dictionary defines "cause of action" as "a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person." Black's Law Dictionary also provides, as a third meaning for "cause of action," "loosely, a lawsuit."

Black's Law Dictionary (9th Ed. 2009). To the extent that the term "cause of action" was intended to be read as a term of art, the time to commence an action under General Statutes § 7-101a(d) must start from the date that the underlying event occurred or lawsuit was brought in order to give meaning to the words "therefor arose" which qualify or modify the term "cause of action." Thus, the limitation clause can be read to have the plain meaning: No *action* shall be maintained under this section against such municipality or employee unless such *action* is commenced within two years after *the group of operative facts [or the lawsuit]* **therefor arose**.

The reference to the operative facts or lawsuit that give rise to the 7-101a action must be to the third party plaintiff's underlying action because otherwise, the word "action" would be used instead. General Statutes § 7-101a(d) uses the terms "action" and "cause of action" distinctly. It is a fundamental tenet of statutory construction that "[t]he use of... different terms... within the same statute suggests that the legislature acted with complete awareness of their different meanings... and that it intended the terms to have different meanings. . . ." Hasselt v. Lufthansa German Airlines, 262 Conn. 416, 426 (2003). Consistent with this rule, both of the terms "action" and "cause of action" may not be referring to a lawsuit under General Statutes § 7-101a. If the terms were meant to be synonymous, the statute would have read:

> No action shall be maintained under this section against such municipality or employee unless such action is commenced within two years after the ~~**cause of**~~ action ~~**therefor**~~ arose nor unless written notice of the intention to commence such action and of the time when and the place where the damages were incurred or sustained has been filed with the clerk of such municipality within six months after such ~~**cause of**~~ action has accrued.

That the statute uses different terms – "action" and "cause of action" – suggests that the two terms are presumed to have separate meanings. As this Court has explained, "[e]very word and phrase is presumed to have meaning, and we do not construe statutes so as to render certain words and phrases surplusage." State v. Walton, 41 Conn. App. 831, 842-43 (1996).

Our rules of statutory construction show that "action" and "cause of action therefor" as they appear in the statute are referring to different things. See Felician Sisters of St. Francis of Connecticut, Inc., v. Historic District Comm'n of the Town of Enfield, 284 Conn. 838, 850 (2008) (the use of different terms within the same statute suggest that the legislature acted with complete awareness of their different meanings). Consistent with this rule of statutory construction, a logical reading of General Statutes § 7-101a(d) is that the term "action" refers to a lawsuit commenced under General Statutes § 7-101a, whereas the term "cause of action" refers to the underlying lawsuit brought against the municipal employee.

b. plain meaning of "arose" and "accrue"

While the first clause concerns the time limitation in reference to the time "after the cause of action therefor **arose**", the second clause concerns the notice provision in reference to the time "after such cause of action **has accrued**." (Emphasis added.) For the plaintiff's lawsuit to be timely, both provisions must be satisfied. Each clause uses a different term to start the clock: "arose" controls the time limitation; "accrued" controls the notice provision. As courts have observed, the terms "arose" and "accrued" are not synonymous. See, e.g., John Doe No. 4 v. Levine, 928 N.E.2d 951, 953 (Mass. App. 2010).

"Arose" is the past tense of "arise" which means "1. To originate; to stem (from) . . . 2. To result (from) <litigation routinely arises from such accidents>." Black's Law Dictionary (9th Ed. 2009) at 122. "Accrue" means "to come into existence as an enforceable right." Id. at 23. This Court has stated, "[a]pplied to a cause of action, the term accrue means to arrive; to commence; to come into existence; to become a present enforceable demand." Coelho v. ITT Hartford, 251 Conn. 106, 11 (1999). In Coelho, in connection with an action on an insurance policy, this Court recognized "the concept of accrual under a particular statute differs from the

right to initiate recovery proceedings under a particular policy provision." Id. at 113-14. A contractually prescribed time limitation could run from the time of the accident (or underlying events) even though a claim for benefits thereunder may not accrue until after that time has expired. Id. (insurance policy required claim for underinsured benefits to be brought within two years, but a claim for underinsured benefits did not accrue before exhaustion of tortfeasor's liability). General Statute 7-101a(d) similarly reflects the concept that an underlying cause of action may *arise* before the cause of action may *accrue*. The legislature chose different words for each provision and therefore the applicable time frame for commencing the clock on that provision should reflect this distinction.

As applied to this case, because the underlying "cause of action" "arose" in spring 2010 (when the underlying tort allegedly occurred – Interpretation One) or at the *latest* in December 2010 (when the lawsuit was commenced – Interpretation Two), the 2015 O'Brien lawsuit failed to meet the two year limitations period. The Appellate Court here erroneously focused only on the "accrued" language in the statute, which triggers the six month notice requirement, and concluded that that clock did not start to run until the 2010 TDS lawsuit was resolved. Even assuming, *arguendo*, that the Appellate Court were correct about the six month notice date based on its "accrued" analysis, the lawsuit was still barred by the two year limitations period.

2. Reading the statute as a whole

Interpretations One and Two are logical readings of the notice and limitations provision when the statute is read as a whole. "It is... [a] principle of statutory construction that, if possible, the component parts of a statute should be construed harmoniously in order to render an overall reasonable interpretation." Board of Education v. State Board of Education, 278 Conn. 326, 333-34 (2006). The Appellate Court's decision expressly refused to consider the relation of General Statutes § 7-101a(d) to the reimbursement provision in General

Statutes § 7-101a(b) and the insurance coverage provision in General Statutes § 7-101a(c). O'Brien, 178 Conn. App. at 484-85.

a. General Statutes § 7-101a(b)

The reimbursement requirement set forth in subsection (b) and the insurance aspects set forth in subsection (c) demonstrate an assumption or expectation that a municipality will have had notice of a third party plaintiff's action against a municipal employee for which liability may attach before a judgment enters against him. Subsection (b), "[i]n addition to the protection afforded under subsection (a) of this section," protects a "municipal employee from financial loss and expense... arising out of a claim, demand or suit ***instituted against*** such officer... by reason of alleged malicious, wanton, or willful act..." (emphasis added) General Statutes § 7-101a(b). It also provides that if a judgment is rendered against a municipal employee "for a malicious, wanton or willful act in a court of law, such municipality shall be reimbursed by such officer or employee for expenses it incurred in providing such defense...." Id. The use of the words "alleged" and "instituted against" (and the absence of the word "judgment" in that sentence) demonstrate that the benefits of General Statutes § 7-101a attach when the allegation against the municipal officer is made. [11]

This section presupposes that the municipality will be aware of the lawsuit against the municipal employee. The Appellate Court's decision recognized this assumption, but failed to harmonize this premise with its conclusion:

> We acknowledge that a reimbursement of defense expenses would only occur if the municipality provided a defense in the prior action, and that a defense can be mounted only if the municipality has knowledge of the prior action.

[11] The statute does not require the municipality to assume the defense. See Vibert v. Board of Educ. of Reg. School Dist. No. 10, 260 Conn. 167, 173-74 (2002) (addressing General Statutes § 10-235, related to teachers and educators, as analogous to the "protect and save harmless" provisions and obligations under 7-101a).

Knowledge of the prior action, however, is not required for a municipality to be liable to indemnify its employee under § 7–101a(b).

(Footnote omitted; emphasis added.) O'Brien, 178 Conn. App. at 484–85. However, if the language of subsection (b) is to be read harmoniously with subsection (d), then knowledge of the prior action is required.

b. General Statutes § 7-101a(c)

Subsection (c) authorizes municipalities to purchase liability insurance:

> (c) Each such municipality may insure against the liability imposed by this section in any insurance company organized in this state or in any insurance company of another state authorized to write such insurance in this state or may elect to act as self-insurer of such liability.

This provision only makes sense if the notice provision applies *prior* to the entry of any judgment. For this reason, in City of Norwich v. Silverberg, this Court looked to this *very* insurance provision in attempting to discern the purpose of General Statutes § 7-101a:

> Subsection (c) is instructive to a reading of "any claim" that excludes the municipality itself, because this subsection authorizes municipalities to purchase insurance to cover "the liability imposed by this section." Liability insurance is designed to protect an insured from claims for damages owed to a third person, and not from losses that the insured suffers directly. ... The fact that subsection (c) speaks only to liability insurance implies that the legislature did not contemplate a need for a municipality to insure against its own losses to deal with the risk assigned to it by subsection (a). Although broader municipal insurance might well be available to provide a more extended all-risk coverage, the legislature was clearly of the view that "this section" required municipalities only to "insure against ... liability."

(Internal citations omitted.) City of Norwich v. Silverberg, 200 Conn. 367, 372 (1986).

Similarly, the notice requirement in subsection (d) must be interpreted such that notice is served on the municipality at some point prior to judgment being rendered in the underlying tort lawsuit because, otherwise, the municipality would likely be without insurance coverage for the loss. It is common knowledge that "[m]ost insurance policies [ ] require reasonable notice as a prerequisite to coverage." Mullany v. Liberty Mut. Ins. Co., 2006 WL 3524560 (Nov. 17,

2006) (*Aurigemma, J.*). A municipality's failure to provide notice of a claim within "a reasonable time" can lead to a denial of coverage. West Haven v. U.S. Fidelity & Guaranty Co., 174 Conn. 392, 397 (1978). Indeed, the purpose of the notice requirement in insurance liability contracts is so that the insurer has "a fair opportunity to investigate accidents" giving rise to the liability. Aetna Cas. & Sur. Co. v. Murphy, 206 Conn. 409, 416 (1988).

In Arrowood Indem. Co. v. King, 304 Conn. 179 (2012), this Court explained that a late notice will not invalidate insurance coverage, but rather will place the burden on the insurer to show prejudice from the untimely notice. In doing so, the Court expressly referenced "the effect of delayed disclosure on the investigatory and legal defense capabilities of the insurer" as examples of the type of prejudice that would cause an untimely notice to negate insurance coverage. Id. at 203. Under the Appellate Court's interpretation that § 7-101a(d)'s notice provision begins after judgment has entered, the municipality would not be able to inform its insurance carrier of a potential claim and the insurer would not have an opportunity to investigate or undertake a defense of the claim. As a result, the municipality would be without insurance coverage for such claims. As this Court explained in Silverberg, the statute must be interpreted in a manner that best facilitates the purpose of the statute as a whole, including subsection (c) which authorizes municipalities to obtain liability insurance coverage to protect the public fisc. For that provision to have meaning, the notice provision in General Statutes § 7-101a(d) would need to relate to the underlying tort action against the municipal employee.

3. Relationship to other statutes

a. General Statutes § 7-465

The protect and save harmless statute for municipal employees (General Statutes § 7-101a) is closely related and complementary to the municipal assumption of liability statute set forth in General Statutes § 7-465. Both are in derogation of the common law immunity

afforded to municipalities. See Elliott v. City of Waterbury, 245 Conn. 385, 411 (1998).[12] General Statutes § 7-465 provides that a municipality will pay liability on behalf of a municipal employee under certain circumstances. It provides that a plaintiff may sue a municipality *and* its employee jointly for the alleged actions of the employee if the statute's time limitations and notice provisions are met.

The notice and limitation provision provides:

> ...No action for personal physical injuries or damages to real or personal property shall be maintained against such municipality and employee jointly unless such action is commenced within **two years after the cause of action therefor arose** and written notice of the intention to commence such action and of the time when and the place where the damages were incurred or sustained has been filed with the clerk of such municipality within **six months after such cause of action has accrued**...

(Emphasis added.) General Statutes § 7-465(a).

General Statutes § 7-101a tracks General Statutes § 7-465. General Statutes § 7-465 provides for the assumption of liability for damages awarded to a third party plaintiff when the employee and municipality are sued jointly for "all sums which such employee becomes obligated to pay by reason of the liability imposed upon such employee by law for damages awarded for infringement of any person's civil rights or for physical damages to person or property..." for the municipal employee's negligent performance of his duties. General Statutes § 7-101a also provides for the municipality to cover a municipal employee's financial loss and expense by reason of similar allegations (as are covered by § 7-465) even where the municipality is not a named defendant in the third party plaintiff's action.

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[12] It is worth noting that the legislature historically treated these two statutes in tandem. Both statutes were *jointly* amended by Public Acts 75-408 (An act concerning indemnification of municipal agents acting within the scope of their employment or appointment) and Public Act 89-212 (An act concerning state emergency response commission).

General Statutes § 7-101a(d) and the time limitations and notice provision of § 7-465 are similarly worded. Each establishes that "no action" under the relevant section "shall be maintained" unless the time limitations and notice provision are followed. The time limitations and the notice provision are then worded the same. It is reasonable that the legislature intended for the time periods set forth in the two statutes to be coterminous. In order for liability to attach on the part of the municipality – whether by a direct action under General Statutes § 7-465 or through the municipal employee under General Statutes § 7-101a – the action must be commenced within two years of when "the cause of action therefor arose" and notice must be provided within six months after that "cause of action has accrued."

Cases interpreting General Statutes § 7-465 have explained both the operation and purpose of the statute.

> Section 7-465, although entitled "Assumption of liability for damage cause by employees," imposes no liability upon a municipality for breach of any statutory duty of its own." ... The obligation imposed by this statute is indemnification for the legal liability arising out of certain tortious conduct of the municipal employee... The municipality's liability is derivative.

(Citations omitted.) Ahern v. City of New Haven, 190 Conn. 77, 82 (1983). "A claim for indemnification against a municipality under § 7-465 is entirely dependent upon establishing liability against a municipal employee." Bonington v. Town of Westport, 297 Conn. 297, 316 (2010). As explained in an earlier case:

> Whatever may be the full scope and effect of the statute, in no event may the municipality be held liable under it unless the municipal employee himself "becomes obligated to pay (sums) by reason of the liability imposed upon . . . (him) by law for physical damages to person or property." [Martyn v. Donlin, 151 Conn. 402, 405 (1964).] While [§] 7-465 provides an indemnity to a municipal employee from his municipal employer in the event the former suffers a judgment under certain prescribed conditions, it is quite clear that the municipality does not assume the liability in the first instance.

Kostyal v. Cass, 163 Conn. 92, 97 (1972). Failure to comply with the procedural prerequisites of General Statutes § 7-465 precludes the action as to the municipality, but does not prevent the common-law action against the municipal employee. Fraser v. Henninger, 173 Conn. 52 (1977) (liability of municipality, but not of municipal employee, dependent upon giving of proper statutory notice); see also Perodeau v. City of Hartford, 259 Conn. 729, 747 n.20 (2002).

As explained by this Court in Fraser v. Henninger:

> The purpose of the provision requiring statutory notice of a claim as a condition precedent to bringing an action for damages against the municipality is to give the officers of the municipality such information as will enable them to make a timely investigation of the claim and to determine the existence and extent of liability... The notice is to be tested with reference to the purpose for which it is required, which is to furnish the party against whom a claim was to be made such warning as would prompt him to make such inquiries as he might deem necessary or prudent for the preservation of his interests, and such information as would furnish him a reasonable guide in the conduct of such inquiries, and in obtaining such information as he might deem helpful for his protection.

(Internal citation omitted.) 173 Conn. at 55-56. This Court has further explained that:

> the purpose of notice is to allow the municipality to make a proper investigation into the circumstances surrounding the claim in order to protect its financial interests... the statutory notice assists a town in settling claims promptly in order to avoid the expenses of litigation and encourages prompt investigation of conditions that may endanger public safety, as well as giving the town an early start in assembling evidence for its defense against meritless claims.

(Internal citations omitted) Pratt v. Town of Old Saybrook, 225 Conn. 177, 182 (1993).

If the municipality is sued along with the employee, pursuant to §7-465, then the notice requirements are to be fulfilled by the third-party plaintiff. At that point, the municipality can conduct an investigation, make decisions about hiring counsel to represent the interests of the municipal employee, with or without joint representation as to the municipality, and undertake other activities associated with litigation. If the third-party plaintiff is proceeding outside of § 7-465 and the municipality has not been sued, then it is incumbent upon the municipal

employee, under § 7-101a, to provide statutory notice to the municipality if he intends to seek indemnification thereunder. Because both statutes provide for derivative liability, the notice provisions for each should be coextensive and begin to run from the original cause of action in the original suit.

It is not logical that a municipality would be liable to its employee for damages stemming from an underlying action where it could not be held liable on a derivative basis due to the plaintiff's failure to meet the statutory preconditions. In other words, General Statutes § 7-101a was not intended to create an end-around for noncompliance with the time provisions in General Statutes § 7-465. Accordingly, the "cause of action therefor" in General Statutes § 7-101a should be referring to the original cause of action in the underlying suit against the municipal employee (as it is in General Statutes § 7-465).

b. General Statutes § 5-141d

Comparing the municipal employee statute, General Statutes § 7-101a, with the state employee statute, General Statutes § 5-141d, further highlights the Appellate Court's error in analyzing the "accrual" provision of § 7-101a(d) as a claim for "indemnification" – a word that does not appear in the statute. Pursuant to Statutes § 5-141d(a), "[t]he state shall save harmless ***and indemnify*** any state officer or employee... from financial loss and expense arising out of any claim, demand, suit or judgment by reason of his alleged negligence ..." (Emphasis added). That statute provides for the State, through the Attorney General, to provide a defense under certain circumstances. General Statutes § 5-141d(b). Subsection (c) addresses the "indemnification" of legal fees and costs incurred by the state employee when the State chooses not to provide a defense. Subsection (d) provides for an action to be brought in Superior Court to enforce the provisions of the statute.

While § 7-101a has been colloquially characterized as an indemnification statute,[13] it does not specifically use the term "indemnify," which is included in § 5-141d. The absence of the word indemnify from § 7-101a demonstrates a significant difference in the "accrual" of a claim under each statute. Under § 5-141d, which expressly provides that the State "indemnify" a government officer who is "thereafter found to have acted in the discharge of his duties," the accrual of the claim under that statute logically occurs post-judgment. See Flanagan v. Blumenthal, 265 Conn. 350, 370 (2003) (*Katz, J., concurring*). Conversely, because § 7-101a does not use the term indemnify, the claimant's action against the municipality for protection does not need to await a judgment to accrue, but rather occurs once a claim, demand or suit has been instituted against such officer.

The practical concerns with the Appellate Court's treatment of § 7-101a as a pure indemnity statute are expressly addressed by the text of § 5-141d (which, by its own terms, is in an indemnity statute). General Statutes § 5-141d(c) states:

> Legal fees and costs incurred as a result of the retention by any such officer, employee or member of an attorney to defend his interests in any such civil action or proceeding shall be borne by the state only in those cases where (1) **the Attorney General has stated in writing** to the officer, employee or member, pursuant to subsection (b) of this section, **that the state will not provide an attorney to defend** the interests of the officer, employee or member, and (2) the officer, employee or member is thereafter found to have acted in the discharge of his duties or in the scope of his employment, and not to have acted wantonly, recklessly or maliciously. Such legal fees and costs incurred by such officer, employee or member shall be paid to such officer, employee or member **only after the final disposition of the suit, claim or demand and only in such amounts as shall be determined by the Attorney General to be reasonable.** In determining whether such amounts are reasonable, the Attorney General may consider

[13] See Orticelli v. Powers, 197 Conn. 9, 11 (1985); City of Norwich v. Silverberg, 200 Conn. 367, 369-70 (1986).

> whether it was appropriate for a group of officers, employees or members to be represented by the same counsel.

(Emphasis added.) There are two significant safeguards that the legislature included in § 5-141d(c). First, the State must have *prior notice* of the lawsuit because the Attorney General must provide the employee with a statement in writing that the State will not defend the suit. Second, the statute permits the Attorney General to determine the reasonableness of the fees being sought by the state employee. These two safeguards are not mentioned in § 7-101a, evincing that it was not the intent of the legislature that it be treated as an "indemnification" statute. Indeed, the City's concerns with the Appellate Court's interpretation of General Statutes § 7-101a(d), *i.e.* lack of prior notice and an opportunity to determine reasonableness, are expressly not at issue in General Statutes § 5-141d.

In sum, if General Statutes § 7-101a is to become an indemnification statute, then it should be for the legislature, and not the courts, to make it so. In such case, the legislature may consider and include procedural safeguards similar to those included in § 5-141d.

C. The City's Interpretation Does Not Lead To Bizarre Results

"It is a fundamental principle of statutory construction that courts must interpret statutes using common sense and assume that the legislature intended a reasonable and rational result." Longley v. State Employees Retirement Commission, 284 Conn. 149, 171-72 (2007). In other words, "[s]tatutes are to be read as contemplating sensible, not bizarre, results." Bennett v. New Milford Hosp., Inc., 300 Conn. 1, 28 (2011). In this context, the this Court has set forth the following three fundamental principles of statutory interpretation: (1) "it is axiomatic that those who promulgate statutes do not intend to promulgate statutes that lead to absurd consequences or bizarre results;" (2) "in construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended"; and (3) "if

there are two asserted interpretations of a statute, we will adopt the reasonable construction over the one that is unreasonable." State v. Courchesne, 296 Conn. 622, 710 (2010).

The most sensible way to read General Statutes § 7-101a(d) is that it requires notice to be made with the municipality at a point prior to the entry of any judgment. To the contrary, however, the Appellate Court affirmed the trial court's conclusion that the notice requirement did not begin to run until after a judgment had been rendered in the 2010 TDS lawsuit. O'Brien, 178 Conn. App. at 487-88. Under the Appellate Court's interpretation, a municipal employee sued for negligence would have no obligation to inform the municipality about the lawsuit prior to the entry of judgment. The first time that a municipality would learn about the lawsuit, under the Appellate Court's interpretation, could be after judgment had been rendered against the municipal employee. In that case, even though the municipality would be deprived of the opportunity to investigate, defend against, or settle the claims, it would still be strictly liable for the entire damages award rendered against the municipal employee, plus the legal fees and costs. The legislature could not have intended such a bizarre result.

Contrary to the analysis made by the Appellate Court based upon a hypothetical scenario it created where the six month notice period expires before the underlying lawsuit is filed, a bar to recovery that limits the municipality's exposure to liability is not a "bizarre" result. See O'Brien, 178 Conn. App. 481–82. The fact that some municipal employees may not receive the benefit of the statute does not make the statute bizarre. Rather, it means that, under Interpretation One, as applied to the "accrued" clause of the statute, only when the municipal employee is sued within six months of the underlying cause of action would the municipality have an obligation to protect or hold the employee harmless. Indeed, the limitations would track the limitations set forth in General Statutes § 7-465, which governs the

ability of a third party to sue the municipality itself for injuries caused by a municipal employee and clearly run from the underlying tort.

It is reasonable that the legislature intended for General Statutes § 7-101a to apply where the third party complied with General Statutes § 7-465 and that the time periods set forth in the two statutes were meant to be consistent and parallel. In other words, there was no intention to create an avenue through which General Statutes § 7-101a could be used as an end around the limitations set forth in General Statutes § 7-465. The Appellate Court's conclusion that Interpretation One creates a bizarre result, simply because under its hypothetical, the municipal employee would not have the benefit of the statute, presumes that "governmental immunity" is, itself, bizarre. But see Potvin v. Lincoln Service & Equipment Co., 298 Conn. 620, 638-39 (2010) (sovereign immunity is not an absurd result).

Moreover, the Appellate Court did not address whether Interpretation Two should apply to the "accrued" clause, under which the notice provision begins to run when "any claim, demand or suit" is initiated against the municipal employee (*i.e.* when the complaint is served). The Appellate Court's "bizarre" scenario simply does not exist under Interpretation Two.

D. If the Statute Is Ambiguous, Only Interpretations One or Two Can Apply

"[T]he question of when the time limitations and notice requirement set forth in § 7-101a(d) begin to run for purposes of a § 7–101a indemnification action [is] an issue on which the decisions of our Superior Courts are divided." O'Brien, 178 Conn. App. at 480. Most courts have viewed General Statutes § 7-101a(d)'s time limitations to start running when the underlying tort cause of action against the municipal employee arises. However, other courts, including the Appellate Court, have concluded that General Statutes § 7-101a(d)'s time limitations do not begin to run until the underlying tort lawsuit against the municipal employee has resulted in a final judgment. Additionally, the Appellate Court's decision is not in accord

with this Court's decisions in City of Norwich v. Silverberg, 200 Conn. 367, and State v. Cain, 223 Conn. 731 (1992). The existence of differing rulings as to the proper interpretation of General Statutes § 7-101a(d) supports the conclusion that the language is ambiguous and susceptible to more than one meaning.

1. The Appellate Court's Decision Is Not in Accord With Prior Supreme Court Decisions Interpreting General Statutes § 7-101a

This Court's prior interpretations of General Statutes § 7-101a and discussion of the operation of subsection (d) further support the City's position that the instant lawsuit should have been dismissed.

In City of Norwich v. Silverberg, 200 Conn. 367 (1986), this Court was asked to determine the scope of General Statutes § 7–101a and whether its proclamation to "protect and save harmless any municipal officer... arising out of *any claim*..." included actions brought by a municipality against its own employees. (emphasis added.) Id. at 373. This Court concluded that General Statutes § 7–101a could not immunize municipal employees from "any claim" brought by a municipality itself. The Court in Silverberg noted that, if General Statutes § 7-101a(d) applied to the municipality, it "could avoid the obligation to indemnify by simply failing to file notice with itself within six months or neglecting to bring suit within two years." Id. at 373. Observing this as a bizarre result, the Court concluded that "[r]ead as a whole, § 7-101a does not apply to actions brought by municipalities against their officers or employees." Id. at 373. In reaching this conclusion, the Court opined that the procedural preconditions imposed by subsection (d) run from the time of the underlying cause of action against the municipal employee. Specifically, the Court read subsection (d) to mean:

> No municipality need indemnify a municipal officer for his losses **unless the prospective claimant** (1) notifies the municipality of his **intention to bring suit** against the municipality's officer **within six months of the accrual of the cause**

> **of action** and (2) initiates suit within two years after the accrual date. Failure to comply with these procedural prerequisites affects only the right to indemnification; it does not impair a claimant's cause of action against the defendant officer himself.

(Emphasis added.) Id. at 373. The Court also noted that its construction of § 7-101a "comports with the apparent purpose behind its enactment." Id. at 374.

> The statute is designed to furnish some relief for injustice that would otherwise attend our well-established doctrine of sovereign municipal immunity... Absent such a statute, claimants injured by the misconduct of municipal officers and employees acting in the course of their official duties would be limited to recourse against individual tortfeasors.

Id. The Court's interpretation of the operation of subsection (d) indicates that the operation of § 7-101a is coterminous with § 7-465.

In Orticelli v. Powers, 197 Conn. 9, 14 (1985), this Court concluded that General Statutes § 7-101a(d) applied only to actions brought pursuant to General Statutes § 7-101a in order to give meaning to the words "under this section" as contained in the provision. The section does not affect the statute of limitations for the separate third-party tort cause of action against a municipal employee which, in that case, was a federal civil rights claim under 42 U.S.C. § 1983. In reaching this conclusion, the Court stated that the purpose of the words "or employee" in General Statutes § 7–101a(d) was to place time limitations on an action *by the municipality* against an employee for reimbursement of defense expenses pursuant to General Statutes § 7–101a(b). While the Court's holding concluded that the limitation provision does not apply to the direct action brought against the municipal employee, it did not address the operation of subsection (d) as to a municipal employee's claim thereunder.

Additionally, this Court's discussion of § 7-101a(d)'s time limitation in State v. Cain, 223 Conn. 731 (1992), is consistent with Interpretation One and contrary to the Appellate Court's interpretation. In that case, the Court considered whether a tape recording of a 911 call was a

"statement" that the prosecution had an obligation to preserve and produce in a criminal case under the Practice Book. In addressing statutes affecting the preservation of public records, the Court expressly mentioned § 7-101a(d)'s time limitation to bring a lawsuit:

> Under current retention schedules, promulgated by the public records administrator, tape recordings of 911 calls must be preserved for thirty days, unless within that period of time a notice of intent to file a claim against a municipality or its employee has been filed with the municipality pursuant to General Statutes § 7-101a(d).... Thus, a municipality may ordinarily erase and reuse the tape after thirty days. It is significant that this thirty day period, arrived at after the appropriate consultations pursuant to § 11–8a, is **five months less than the six month notice of claim period provided under § 7–101a(d)**. The responsible public officials could have mandated that 911 tapes be preserved for six months to coincide with § 7–101a. Instead, it is apparent that they weighed the financial and administrative burdens of retaining tapes against the risks of liability under § 7–101a.

State v. Cain, 223 Conn. at 742–44. This Court in Cain clearly contemplated that the six month notice requirement would begin to run from the underlying cause of action.

The Appellate Court's decision cannot be reconciled with these prior Supreme Court decisions as to the operation of General Statutes § 7-101a. Even if the prior decisions' discussion of subsection (d) can be characterized as *dicta*, as the Appellate Court opined, they inform errors in the Appellate Court's analysis. The Appellate Court's rejection of Interpretation One, failure to consider Interpretation Two, and adoption of Interpretation Four, if not itself in error, is at least inconsistent with other case law and is, at a minimum, the result of an ambiguity in the statute's language.

2. Extratextual Evidence Supports the City's Position

To the extent that the statute's language is ambiguous, the legislative history only supports Interpretation One. General Statutes § 7-101a was enacted in 1971. The original version of the statute stated:

> Each town, city, borough, consolidated town and city and consolidated town and borough shall protect and save harmless any member of any board, committee

> or commission of such municipality from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of alleged negligence on the part of such member while acting in the discharge of his duties as such member. Each municipality may insure against liability imposed by this section in any insurance company organized in this state or in any insurance company of another state authorized to write such insurance in this state or may elect to act as self-insurer of such liability.

Public Act 71-726. In 1977, the statute was amended to include subpart (b), addressing suits alleging malicious, wanton, willful or ultra vires acts. See City of West Haven v. Hartford Ins. Co., 221 Conn. 149, 158 (1992) (discussing Public Act 77-399).

The time limitations and notice requirements contained in General Statutes § 7-101a(d) were enacted as part of Public Act 80-403. The primary purpose of Public Act 80-403 was to create an act empowering municipalities to establish equal rights and opportunities commissions. See New Haven Comm'n on Equal Opportunities ex rel. Washington v. Yale Univ., 183 Conn. 495, 501 (1981).

Most of the discussion in the legislative history behind Public Act 80-403 is on the topic of the overall goal of the legislation, which was to authorize municipalities "to adopt a code or prohibit discrimination through tort practices and establish a local agency to investigate alleged violations of that code." 23 H.R. Proc., Pt. 2, 1980 Sess., p.6452 (remarks of Representative Milner). However, when the bill was introduced to the Senate, a specific reference was made to General Statutes § 7-101a(d)'s limitations and notice requirements:

> Thank you. This bill provides statutory authority for any municipality to adopt a code of prohibited discriminatory practices and to establish a local agency to investigate any allegation of discriminatory practice. The bill, as amended, would define discriminatory practices which a local agency might address as those covered by existing statutes pertaining to discrimination in employment, credit and housing or on account of color, race, sex, physical disability and blindness. It would [enumerate] specific powers of the local government, require that a hearing be held before any finding is made that a local code was violated, specify the rights of respondent in such hearings, enable anyone aggrieved by the local agency to order an appeal to the State Commission on Human Rights and Opportunities **and set a two-year time limit on the commencement of**

> **any civil right damage suits against municipal officers and employers and require that any intent to commence any such legal action be filed within six months of their cause**. In addition, the bill stipulates through amendment by the House that if CHRO acts on a discrimination case involving the same parties and subject matter be considered at the municipal level, state action would take precedence. The bill would also validate the existence of any local board, commission or council, committee or other agency created for such purpose by municipal charter or ordinance prior to the date of the bill's passage.

(Emphasis added.) 23 Sen. Proc., Pt. II, 1980 Sess, p. 3624-3625 (remarks of Senator Johnson). This is the only statement about General Statutes § 7-101a(d)'s time limitations contained in the legislative history and it is clearly referring to the underlying tort cause of action against the municipal employee. The current language contained in General Statutes § 7-101a(d) remains identical to that used in Public Act 80-403. Thus, of the four possible interpretations of the statute, only Interpretation One is supported by the legislative history.

CONCLUSION

For any and all of the reasons set forth herein, the Appellate Court's decision should be reversed.

Respectfully Submitted,

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CERTIFICATION

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure § 67-2, that on May 7, 2018:

(1) the electronically submitted brief and appendix has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and

(2) the electronically submitted brief and appendix and the filed paper brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and

(3) a copy of the brief and appendix has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with Section 62-7; and

(4) the brief and appendix being filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically; and

(5) the brief complies with all provisions of this rule.

Proloy K. Das, Esq.

CERTIFICATE OF SERVICE

Pursuant to Practice Book § 62-7 the undersigned certifies that a copy of the foregoing was mailed this 7th day of May, 2018 to:

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